



Regulation of electronic communications: between competition law and industrial policy

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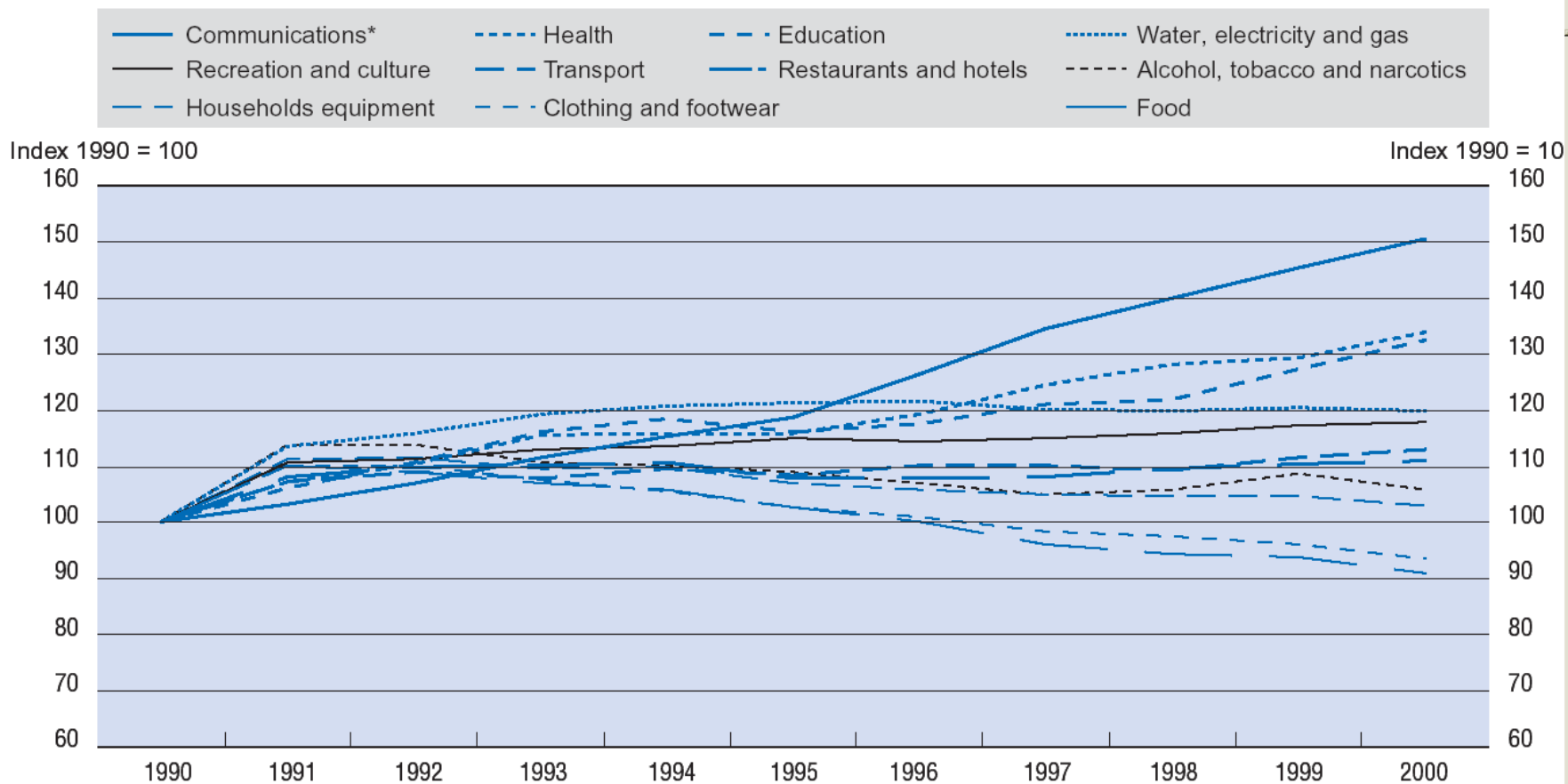
Growth, investment and regulation

Regulation is only one among many other drivers of investment and growth in electronic communications



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Figure 2.1. **Changes in the proportion of communication in disposable household income**

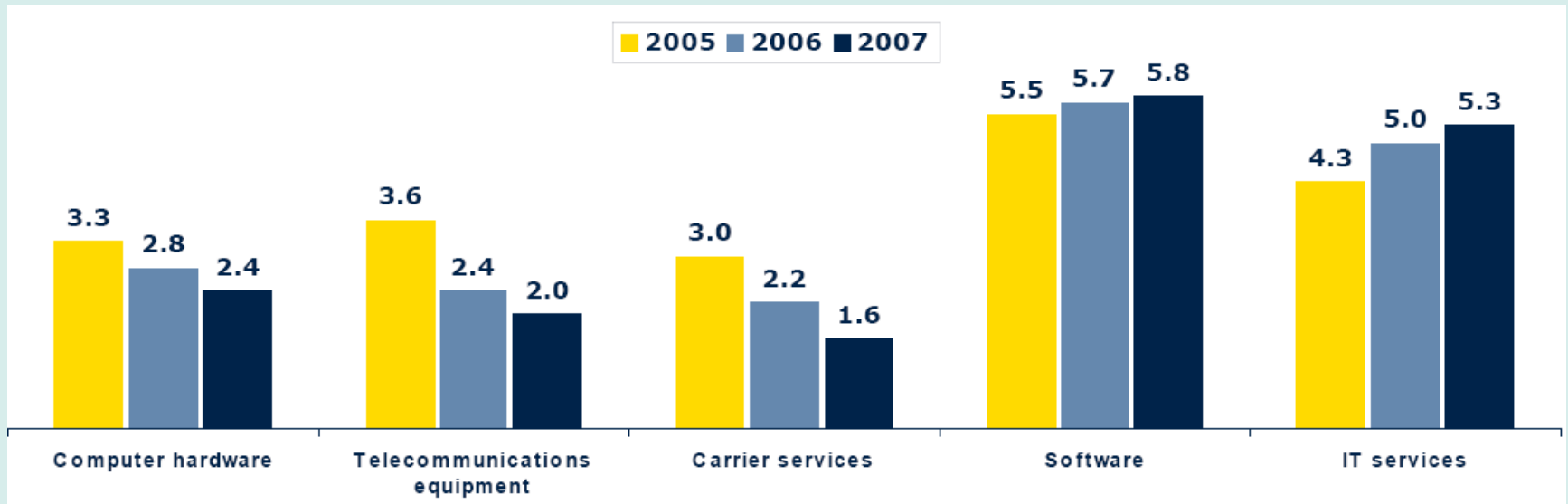


* Communications includes telecommunication equipment and services, and postal services.

Note: Hungary, Norway, Slovak Republic, Switzerland and Turkey are not included in this index.

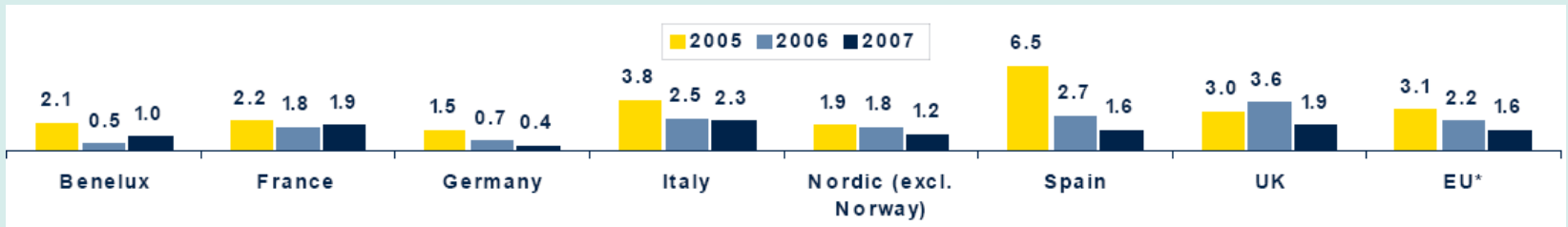
Source: OECD, SNA database.

Growth in ICT: 2005 - 2007



Source: EITO – Feb 2006

Growth in Telecom: 2005 - 2007



Source: EITO – Feb 2006

Discrepancy |b| theory and practice

The official line is:

- Towards a lighter regulatory regime
- More legal certainty
- Move away from old-fashioned SSR towards competition law

Towards a lighter regime

1998 package

1999 - 2002
("Improvements to the '98 package)

2003 package

4 markets:

- Voice Telephony
- Leased Lines (retail)
- Fixed Interconnection
- Mobile Interconnection

- LLU
- Bitstream
- Part Circuits
- Mobile Termination
(Termination on individual networks)

18 markets:

- 1998 Package Markets
- Markets regulated from 1999 or later
- New emphasis on Mobile Markets
- Broadcasting Transmission

Towards a lighter regime?

- Retail remedies - forbearance

- New wholesale remedies
 - WLR
 - Naked DSL

- New relevant wholesale markets (at least one)
 - SMS termination

More legal certainty

- Objectives of regulation are not prioritised

- VoB:
 - belongs to M3-6?
 - same remedies?

- VDSL/FTTH included in M11 & 12

Away from SSR towards CL (1)

EU Telecom policy – a new form of industrial policy!

- 90s: asymmetric regulation to create a level playing field
- 00s: recognition that competition would not develop “naturally”
 - Additional remedies: CPS; NP; LLU; WLR
 - Mindset change: from letting competition happen to making it happen => assistance to entry
 - Replicability test

Away from SSR towards CL (2)

Price squeeze test

→ 'equally-efficient-operator' test

VERSUS

→ reasonably efficient entrant test

Away from SSR towards CL (3)

→ Roaming:

→ Market 17 defined by Commission recommendation

→ Italian, Finnish and Norwegian NRAs found market 17 effectively competitive

→ Next step: Regulation!

Away from SSR towards CL (4)

Wholesale Line Rental – Domino effect

A remedy to market failure, but on which market?

→ Wholesale exchange line (UK)

→ 2003: OFTEL identified a gap between M8 and M11 (in contrast with M15)

→ Retail access (M1-2)

→ 2004: Austria, Ireland, Portugal and Sweden

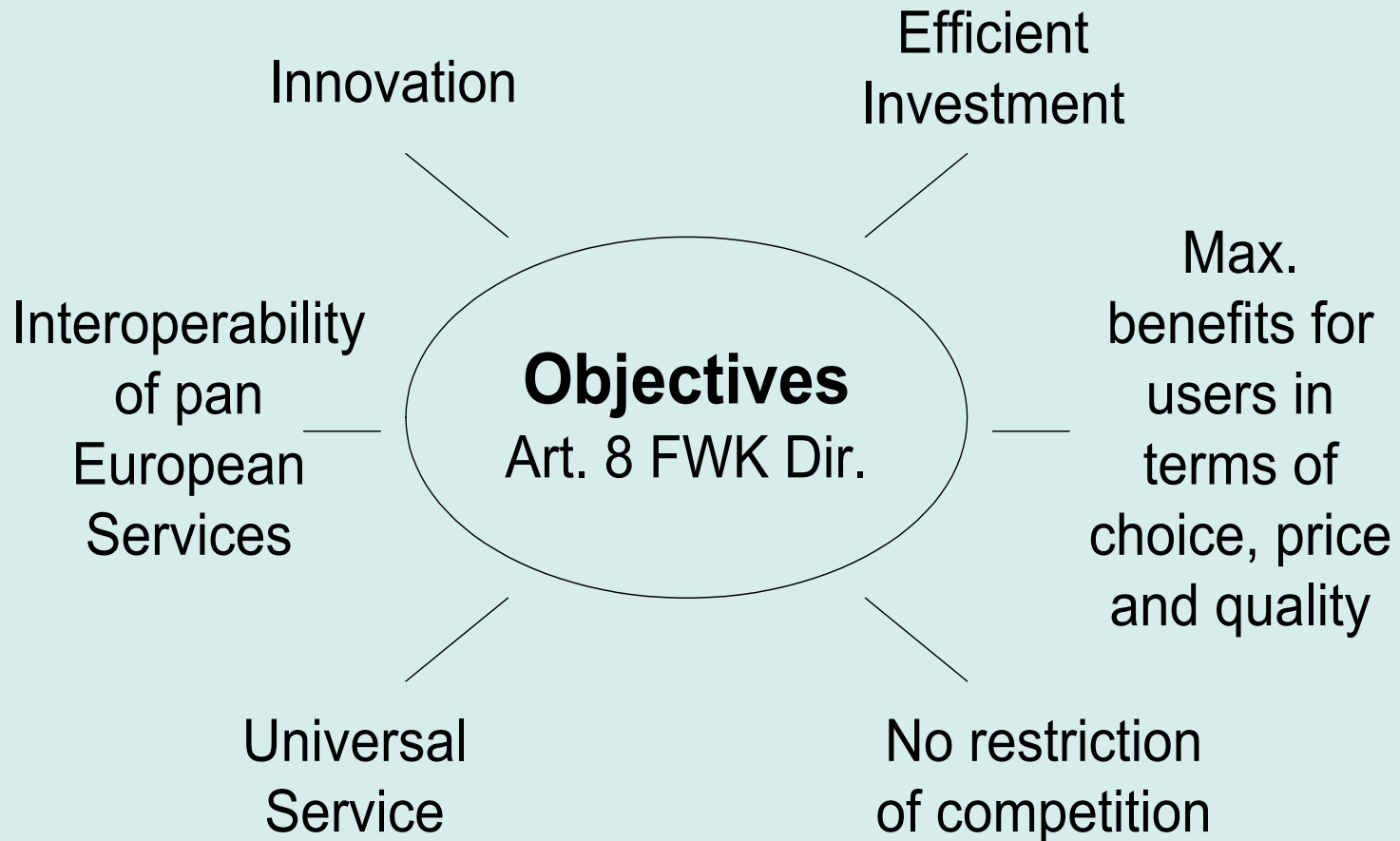
→ Call origination (M8)

→ 2005: DK and France

The objectives of regulation (1)

- The objectives defined by the FWK Dir (Art. 8)
- Beyond article 8
- Excess of harmonisation?

The objectives of regulation (2)



The objectives of regulation (3)

- ➔ ARCEP to ensure (Recent FT/Neuf Télécom case)
 - ➔ effective and fair competition between network operators and service providers to the benefit of users
 - ➔ creation of jobs, efficient investment in infrastructures, innovation and competitiveness
 - ➔ to the definition of interconnection conditions that guarantee the freedom of communications for all users.

The objectives of regulation (4)

- Achievement of the single market
- Balance between harmonisation and subsidiarity
- More Europe: European body of appeal
- Less Europe: CPS in the UK in the late 90s

Who is in the driving seat?

- Early 90s: European Commission and the UK
- Late 90s: Germany - CPS, third party billing; single point of nationwide interconnection
- Early 00s:
 - France – bitstream access / *replicability* test
 - Commission – article 7 procedure

2006 Review

- Pros and cons of industrial policy
- Danger of second guessing the market in an era of breakthrough technologies

2006 Review

- ➔ Recognition by NRAs that they have to make a choice between conflicting objectives
- ➔ Clarification of their objectives
 - ➔ Support for all new entrants? For those climbing up the investment ladder? Which rung? Platform competition
 - ➔ What priority for the consumer? Low prices today or FTTH tomorrow



TELECOMMUNICATIONS & ELECTRONIC COMMERCE REGULATORY SUPPORT SERVICES



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M18: notifications

- 12 MSs so far
 - eleven notifications
 - Italy: national consultation
- No SMP on radio transmission
- Analogue Terrestrial TV
 - 10 SMP operators
 - Italy (public consultation): RAI and RTI joint dominance
- DTT: six SMP operators
- Cable market: two SMP operators

M18: is there a point?

	NRA decision or DTT launch: which one came first?
FI	DTT launch Too late
FR	DTT launch Too late but see comments
LT	Market analysis OK Although a bit short for capital city
ES	DTT launch Too late
SE	DTT launch Too late
UK	DTT launch Too late